IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 157 OF 1995

Tukaram Bhau Patil,
Age 59 years,
Occ. Retired P.S.I.,
R/o. 713, Phule Plot,
Uplai Road, Barshi,
District Solapur ...Appellant.

Versus

The State of Maharashtra ...Respondent

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Shri. T.E. Mane, Advocate for the appellant.

Shri. A.S. Shitole, A.P.P. for Respondent.

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CORAM: SMT. V.K. TAHILRAMANI, J.

DATED: 2ND NOVEMBER, 2004

ORAL JUDGMENT:-

1. Through this appeal, the appellant i.e. original accused challenges the judgment and order dated 18.2.1995 passed by the learned Special Judge, Solapur in Special Case No.10 of 1990. By the said judgment and order, the learned Special Judge convicted the appellant under Section 7 and sentenced him to R.I. for two years and to pay fine of Rs.2,000/- i/d R.I. for six months. The learned Special Judge also convicted the appellant under section 13(1) (d) r.w. Section 13(2) of the

said Act and sentenced him to R.I. for one year and to pay fine of Rs.1,000/- i/d R.I. for three months. The learned Special Judge further directed that both substantive sentences shall run concurrently.

2. Briefly stated the prosecution case is as under:-

. The complainant P.W.3 Nuruddin Kazi was serving as a social worker at Barshi, District Solapur. At the relevant time the appellant was serving as a P.S.I. in Barshi town police station. The complainant owned about 22 acres of land at Nagobachiwadi adjoining the land owned by the family of one Navnath Pandhare. There was a dispute between Suresh Pandhare and Ganesh Jadhav on account of the said land. On 6.4.1990 a quarrel took place between Navnath Pandhare and Suresh Pandhare on one side and Ganesh Jadhav on the other side. A case i.e. C.R. No. 38/90 came to be registered in relation to the said incident.

. On 8.4.90 when the complainant Kazi was passing near the house of the appellant P.S.I. Patil, the appellant was sitting on "Katta" in front of his house. The appellant called the complainant and told him that he is involved as an accused in C.R.

No.38/90. Kazi told the appellant that when the quarrel took place, he was not at Nagobachiwadi at that time. Whereupon the appellant told the complainant that he does not know anything and that the offence is registered against him and he will be arrested. The appellant then told the complainant Kazi that he will be required to pay appellant Rs.500/- if he wants to avoid arrest. On 14.4.90 the appellant again repeated his demand, the complainant stated that he had no money and he will pay later on. On 15.4.90 again the appellant repeated the demand, at that time the complainant told him that he had no money and he assured the appellant that he will pay Rs.500/- afterwards. Again the appellant met the complainant in front of Jawahar Hospital and demanded money, at that time the complainant told the appellant that he will pay the money on the next date fixed in the Court. Thereafter, the appellant informed him that next date is fixed on 29.5.90 and on that day the complainant could pay him Rs.500/- either in the appellant's house between 7.00 to 7.30 a.m. or otherwise in Barshi police station. The complainant agreed to pay Rs.500/- on 29.5.90.

. On 28.5.90 the complainant went to the Anti Corruption Bureau office and narrated his grievance to P.W.6 P.I. Shaikh. His complaint (Exh.34) came

to be recorded. Thereafter, P.I. Shaikh told him to come at about 3.00 to 3.30 a.m. on 29.5.90. Accordingly, the complainant went to Anti Corruption Office at the same time. Thereafter, pre-trap formalities were carried out and the trap party i.e. the complainant, police and panchas went to Nagobachiwadi. They halted some distance away from the house of the appellant. Thereafter, as instructed by P.W.6 P.I. Shaikh, the complainant and panch witness i.e. P.W.1 Mr. Isaq Shaikh entered in the house of the appellant. On the complainant making enquiry with the appellant about his work, the appellant told him that "MEE SANGITLELE DYA" (give, what was told by me). Thereupon, the complainant took notes on which Anthracene powder had been put and handed over those notes to the appellant. The appellant accepted those notes with his right hand thereafter, he took them in left hand, counted them and then kept those notes on the bed and kept a pillow on the notes. Thereafter, the complainant came out of the house and gave pre arranged signal to the police and other panch witness etc. Accordingly, those persons entered into the house of the appellant. Post trap formalities were carried out and the Anthracene powder was found on both the hands of the appellant as well on the bed sheet and on the pillow cover. Thereafter, the

complaint came to be lodged. After completion of investigation, charge sheet came to be filed.

3. Charge came to be framed against the appellant under Section 7 and section 13(2) r.w. 13(1) (d) of the Prevention of Corruption Act, 1988. The appellant pleaded not guilty to the said charge and claimed to be tried. The defence of the appellant is that of denial. It is further the defence of the appellant that the complainant was an L.I.C. agent and the appellant had given him Rs.500/- to take out a Life Insurance Policy for the daughter of the appellant. However, the complainant did not take out the said policy and on the appellant making enquiries, the appellant came to know that no such policy had been taken out by the complainant. Hence, the appellant herein lodged the complaint against the complainant, the complainant through mediators asked the appellant to take back his complaint in relation to the L.I.C. policy whereupon the appellant stated that if Rs.500/- which he had paid towards the premium for L.I.C. policy of his daughter is given back to him, he would withdraw the complaint. Thus, it is the case of the appellant that Rs.500/- was given by the appellant to the complainant in these circumstances.

4. During the course of trial, the prosecution has examined six witnesses. The appellant has examined three witnesses. After going through the entire, evidence, the learned Special Judge convicted and sentenced the appellant as stated in para-1 above. Hence, this appeal.

5. I have heard Shri. T.E. Mane, the learned advocate for the appellant and Shri. A.S. Shitole, the learned A.P.P. for the State. I have also perused the entire record pertaining to the present case.

6. The conviction of the appellant is mainly founded on the evidence of complainant P.W.3 Mr. Kazi and the evidence of panch witness i.e. P.W.1 Mr. Mohd. Isaq Shaikh. P.W.3 Mr. Kazi has stated that he owned 22 acres of land at Nagobachiwadi and land of one Navnath Pandhare was adjoining his land. There was a dispute between Navnath Pandhare and Suresh Pandhare on one side and Ganesh Jadhav on the other side in relation to the Bandh of the said land. On 6.4.90 there was a quarrel between Suresh Pandhare and Ganesh Jadhav in relation to the land of Pandhare. On 8.4.90 at about 7.00 - 7.30 a.m. when the complainant was passing near the house of the appellant, he saw the appellant was sitting on Katta of his house. The

appellant called him and told that in the quarrel which took place on 6.4.90 the complainant was involved as an accused. The complainant informed that he was not present in Nagobachiwadi when the quarrel took place. However, the appellant told the complainant that he does not know anything and offence is registered against him and he will be arrested. The appellant further told the complainant that if he wanted to avoid his arrest, he will have to pay Rs.500/- to the appellant. On 14.4.90 the appellant again repeated his demand the complainant stated that he had no money and he will pay later on. On 15.4.90 again the appellant repeated the demand the complainant told him that he had no money and he assured the appellant that he will pay Rs.500/- afterwards. Again the appellant met the complainant in front of Jawahar Hospital and demanded money, at that time, the complainant told the appellant that he will pay the money on the next date fixed in the Court. Thereafter, the appellant informed him that next date is fixed on 29.5.90 and on that day the complainant would pay him Rs.500/- either in the appellant's house between 7.00 to 7.30 a.m. or otherwise in Barshi police station. The complainant agreed to pay Rs.500/- on 29.5.90.

7. P.W.3 Kazi has further stated that on 28.5.90

he went to the Anti Corruption Bureau office and narrated his grievance to P.W.6 P.I. Shaikh. His complaint (Exh.34) came to be recorded. Thereafter, P.I. Shaikh told him to come about 3.00 to 3.30 a.m. on 29.5.90. Accordingly, On 29.5.90 the complainant went to the Anti Corruption Office at the said time. Thereafter, pre-trap formalities were carried out and the trap party i.e. the complainant, police and panchas went to Nagobachiwadi, they halted at some distance from the house of the appellant. Thereafter, as instructed by P.W.6 P.I. Shaikh, the complainant and panch witness i.e. P.W.1 Mr. Isaq Shaikh entered into the house of the appellant. The complainant made enquiry with the appellant about his work, whereupon the appellant told him that "MEE SANGITLELE DYA" (give, what was told by me). Thereupon, the complainant took the currency notes on which Anthracene powder had been put and handed over the notes to the appellant. The appellant accepted those notes with his right hand thereafter, he took them in left hand and counted them. He then kept those notes on the bed and kept a pillow on the notes. Thereafter, the complainant came out of the house and gave pre arranged signal to the police and other panch witness etc. Accordingly, those persons entered into the house of the appellant. Post trap formalities were

carried out and Anthracene powder was found on both the hands of the appellant as well on the bed sheet and on the pillow cover. Thereafter, the complaint came to be lodged. Nothing has been elicited in the cross examination of this witnesses so as to disbelieve his testimony on the point of demand of Rs.500/- by the appellant and acceptance of Rs.500/- by the appellant.

8. The prosecution has also examined panch witness i.e. P.W.1 Mohd. Isaq Shaikh. His evidence in relation to the events which occurred on 29.5.90 corroborates that of the complainant from the time that the panch witness was called in the office of the Anti Corruption Bureau till the amount of Rs.500/- was handed over by the complainant to the appellant and the complainant went outside the house and gave signal to the raiding party. Thereafter, the panch witness Mohd. Ishaq Shaikh has stated that the members of the raiding party entered inside the house of the appellant. This witness told P.W.6 P.I. Shaikh that the appellant P.S.I. Patil accepted Rs.500/- and that he kept the said notes below the pillow. When P.W.6 P.I. Shaikh introduced him, the appellant got frightened and he told Inspector P.W.6 P.I. Shaikh that "JAUDYA SAHEB BAGHA CHUK ZHALI" i.e. look Saheb let me go,I have made a mistake. Thereafter,

P.I.Shaikh asked the other panch to take out the notes which were below the pillow. Numbers of the notes and Numbers mentioned in the panchanama were compared. They tallied. Thereafter, the hands of appellant and portion below the pillow where notes were kept and bed sheet came to be examined in the light of the ultraviolet lamp. The hands of the appellant and the pillow cover and bet sheet were found to have bluish glaze on them. Thereafter notes were kept in an envelope and the envelope came to be sealed. Nothing has been brought out in the cross examination of this witness so as to disbelieve his testimony.

9. Shri. Mane, the learned advocate for the appellant has submitted that the defence of the appellant is that the complainant was an L.I.C. agent and the appellant had given him Rs.500/- to take out a Life Insurance Policy for the daughter of the appellant. However, the complainant did not take out the said policy and on the appellant making enquiries, the appellant came to know that no such policy had been taken out by the complainant. Hence, the appellant herein lodged the complaint against the complainant, the complainant through mediators asked the appellant to take back his complaint in relation to the L.I.C. policy whereupon the appellant stated that

if Rs.500/- which he had paid towards the premium for L.I.C. policy of his daughter is given back to him, he would withdraw the complaint. Thus, it is the case of the appellant that it was in these circumstances that Rs.500/- was given by the complainant to the appellant. In support of this defence, the appellant has examined three witnesses i.e. D.W.1 Ramanna Kanagi, D.W.2 Bhairavnath Barangule and D.W.3 Narayan Kondabatti. D.W.1 Ramanna Kanagi was working as Branch Manager in Solapur District Industrial Co-operative Bank. He has stated that the complainant was working in the Bank during the year 1981 to 1986. Thereafter, he came to be dismissed from service as he did not deposit customers money in the Bank. D.W.3 Narayan Kondabatti was serving as a Branch Manager in District Industrial Co-operative Bank. His evidence is on the same lines as that of D.W.1 Ramanna Kanagi. However, the evidence of both these witnesses is of no assistance to the appellant.

10. Shri. Mane, has heavily relied upon the evidence of D.W.2 Bhairavnath Barangule. D.W.2 Bhairavnath Barangule has stated that the complainant is a L.I.C. agent. The complainant came to him and told him that he has committed a mistake that he had taken Rs.500/- from P.S.I.

Patil (appellant) for taking out policy of his daughter and that he did not deposit the said amount in L.I.C. office, hence, P.S.I. Patil had made complaint against him. Due to the said complaint his agency is likely to be terminated. Thereafter, D.W.2 Bhairavnath Barangule has stated that he alongwith the complainant went to the house of the appellant and he told the appellant that the complainant would lose his agency and that the complainant would repay the amount and that the appellant should withdraw the complaint against the complainant i.e. Mr. Kazi. During the discussion this witness asked the appellant as to when he would withdraw the complaint, thereupon the appellant stated that when the amount is given to him he would withdraw the complaint. Thus, it was agreed that on 29.5.90 the said amount of Rs.500/- would be paid, thereafter, they left the house of the appellant. However, the defence has not examined any staff member from L.I.C. office to show that the appellant had gone to the L.I.C. office and made enquiry regarding insurance policy of his daughter. There is no iota of evidence from the L.I.C. office that at any time the appellant approached the L.I.C. office and made enquiries. So also no complaint has been produced which allegedly was made by the appellant against the complainant.

11. It has come on record that Defence witness Barangule was co-accused of the appellant in C.R. No.38/90. It is very clear from the cross examination of this witness by the prosecution that he is an interested witness. It is not in dispute that this witness was Sarpanch of Nagobachiwadi. The appellant was serving at Barshi and Nagobachiwadi is under Barshi police station. This witness is clearly an interested witness. The evidence of this star witness for the defence cannot be accepted in the facts and circumstances of the present case.

12. Moreover, the defence that the amount was relating to the premium of L.I.C. policy which was taken out in the name of the daughter of the appellant and that the said amount was being returned by the complainant to the appellant on 29.5.90 cannot be believed in view of the conduct of the appellant. The conduct of the appellant is not consistent with his innocence and is consistent with his guilt. After the money was handed over by the complainant to the appellant and the complainant gave signal to the raiding party and the members of the raiding party entered into the house of the appellant, P.W.6 P.I. Shaikh disclosed his identity, whereupon the appellant got

frightened and he told Inspector P.W.6 P.I. Shaikh that "JAUDYA SAHEB BAGHA CHUK ZHALI" i.e. look Saheb let me go,I have made a mistake. From this it is clear that it was not the money of repayment of premium as suggested by the defence. There was no necessity for the appellant to get frightened on coming to know the identity of the police officer. It was not necessary for the appellant to say that a mistake has been committed by him because of acceptance of the amount which was given for the purpose of getting his daughter insured as per the defence case. Such admission is not admissible by way of confession, however, the conduct of the appellant is relevant. The said statement has been made in the presence of panch witnesses. The panch witness P.W.1 Mohd. Isaq Shaikh has clearly deposed about this aspect.

13. It is clear from the defence that appellant accepted Rs.500/- from the complainant. When acceptance is proved, presumption arises under Section 20 of Prevention of Corruption Act, 1988 about motive and reward. It is true that in order to rebut the presumption, evidence of defence need not be as strong as it is required for prosecution. The explanation of defence has to be probable. Looking to the facts and circumstances of this I am satisfied that defence is not probable and that

presumption is not rebutted at all.

14. It was submitted on behalf of the defence that the complainant himself is involved in a case under TADA and that he had also lodged another complaint under Prevention of Corruption Act, 1988 against another person. If as per the evidence, the complainant was criminal and the appellant knew about this fact it is not probable that he would fall pray to the insistence of the complainant to get insured his daughter at the instance of the appellant. In my opinion, the fact that the complainant is involved in another case would not by itself make his evidence untrustworthy.

15. It was further submitted on behalf of the defence that if at all any demand had been made by the appellant, the complainant would have disclosed about this fact to other persons but there is nothing on record to show that he had disclosed this fact to other persons. This goes to show that no such demand was made by the appellant. In my opinion immediate disclosure is not compulsory and it depends on the nature of the person and circumstances of the case. Non disclosure of the fact of demand would not destroy the prosecution case.

16. Thereafter, it was submitted that the demand was made for the first time on 8.4.90 at about 7.00 - 7.30 a.m. At that time the complainant was passing by the house of the appellant, the appellant called him and after discussion told him that if the complainant wanted to avoid arrest, he has to pay appellant Rs.500/-. It is submitted that the appellant stays at Nagobachiwadi whereas the complainant is a resident of Barshi. Both these places are far away and hence, it is not possible that the complainant would have come to Nagobachiwadi at 7.00 - 7.30 a.m. In this connection, it would be pertinent to note that it has come in the evidence of the complainant that the complainant is having 22 acres of land at Nagobachiwadi, in such case it would be natural for the complainant to visit Nagobachiwadi. It is also a well known fact that agricultural operations start early in the morning, thus in such case if the complainant is found at Nagobachiwadi at 7.00 - 7.30 a.m., his presence there at the said time can be said to be natural.

17. Looking to the evidence on record, I am of the opinion that the learned Special Judge has rightly convicted and sentenced the appellant as stated above. For the said reasons, the conviction and sentence of the appellant as imposed by the learned

Special Judge is confirmed and the appeal is dismissed. The appellant is on bail, he shall surrender to serve out his sentence.

18. At this stage, Shri. Mane, the learned advocate for the appellant prays for eight weeks time to surrender. In view of the prayer, appellant is granted eight weeks time to surrender.